

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA, §  
§  
Plaintiff-Respondent, §  
§  
V. § CIVIL ACTION NO. H-07-3075  
§ CRIMINAL ACTION NO. H-06-083  
§  
§  
LUIS FERNANDO JUAREZ, §  
§  
§  
Defendant-Movant. §

ORDER ADOPTING THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS  
OF LAW, AND THE RECOMMENDATION OF THE MAGISTRATE JUDGE

This case was referred to the Magistrate Judge for an evidentiary hearing on Movant Luis Fernando Juarez's claims that (1) the underlying order of deportation is invalid because he attained United States citizenship through his naturalized mother; and (2) that his trial counsel was ineffective for failing to investigate and assert his derivative United States citizenship as a defense to the charges. Juarez was appointed counsel, and an evidentiary hearing was held before the Magistrate Judge on June 1, 2009, and June 17, 2009. The Court has received from the Magistrate Judge Proposed Findings of Fact and Conclusions of Law, and Recommendation that All Relief be Denied on Juarez's § 2255 Motion to Vacate, Set Aside or Correct Sentence. (Document No. 78). Juarez has filed objections to the Magistrate's Proposed Findings of Fact and Conclusions of Law and Recommendation (Document No. 79). The Court, after having made a *de novo* determination of Juarez's claims and the evidence received at the

evidentiary hearing, as is reflected in the transcript of the evidentiary hearing, is of the opinion that the findings and recommendations of the Magistrate Judge are correct and should be and hereby are accepted by the Court in their entirety. Accordingly,

It is ORDERED and ADJUDGED for the reasons set forth in the Magistrate Judge's Proposed Findings of Fact and Conclusions of Law, and Recommendation that All Relief be Denied on Movant's § 2255 Motion to Vacate, Set Aside or Correct Sentence, filed on September 15, 2009, which is adopted in its entirety as the opinion of this Court, that all relief on Movant Luis Fernando Juarez's § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 186) is DENIED. It is further

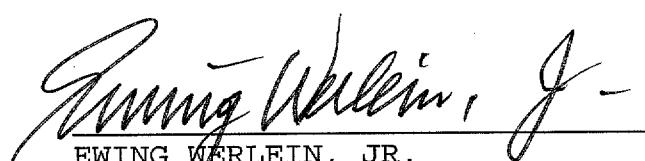
ORDERED that a Certificate of Appealability is DENIED. A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 120 S. Ct. 1595, 1603-1604 (2000) (internal quotations and citations omitted). Stated differently, where the claims have been dismissed on the merits, the petitioner "must demonstrate that

reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 1604; Beasley v. Johnson, 242 F.3d 248, 263 (5<sup>th</sup> Cir.), cert. denied, 122 S.Ct. 329 (2001). When the claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. A district court may deny a certificate of appealability *sua sponte*, without requiring further briefing or argument. Alexander v. Johnson, 211 F.3d 895, 898 (5<sup>th</sup> Cir. 2000).

For the reasons set forth in the Proposed Findings of Fact and Conclusions of Law and Recommendation that All Relief be Denied on Juarez's § 2255 Motion to Vacate, Set Aside or Correct Sentence, the Court determines that reasonable jurists would debate the correctness of the findings or conclusions contained therein.

The Clerk will enter this Order and send copies to all parties of record.

Signed at Houston, Texas this 30<sup>th</sup> day of October, 2009.

  
Ewing Werlein, Jr.  
UNITED STATES DISTRICT JUDGE